

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481-rdd

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In the Matter of:

DELPHI CORPORATION, ET AL.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 24, 2009

10:02 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

Hearing re: Emergency Motion for Order under Sections 105(a)  
and 362 of The Bankruptcy Code (I) Enforcing Automatic Stay or,  
in Alternative (II) Extending Automatic Stay Provisions of  
Section 362 of the Bankruptcy Code to Certain Actions Against  
the Debtors' Officers and Directors

Transcribed by: Hana Copperman

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A P P E A R A N C E S :

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(TELEPHONICALLY)

1 P R O C E E D I N G S

2 THE COURT: Please be seated. Okay. Good morning.  
3 We're here on Delphi Corporation.

4 MR. HOGAN: Good morning, Judge. Al Hogan from  
5 Skadden Arps Slate Meagher & Flom on behalf of the debtors.  
6 Judge, we are here this morning on the debtors' emergency  
7 automatic stay enforcement motion, filed at docket number  
8 18579. Judge, after the hearing yesterday I spent a  
9 considerable amount of time with opposing counsel attempting to  
10 resolve our issues consistent with Your Honor's guidance. As  
11 reflected in the letter submitted to chambers this morning by  
12 opposing counsel, unfortunately that wasn't the case. And the  
13 crux of the issue, Judge, is that the debtors and the DSRA  
14 have a fundamental disagreement over whether the DSRA's  
15 activities, both taken and, apparently, as planned, would, or  
16 could, violate the automatic stay as it pertains to those  
17 actions that have been or may be taken against the debtors or  
18 their representatives.

19 And, Judge, we believe that the answer to that  
20 question is clearly yes, that their actions in Michigan and the  
21 actions that they appear intending on taking will, in fact,  
22 violate the automatic stay inasmuch as it relates to the  
23 activities that the debtors are undertaking in this court. We  
24 also believe, Judge, and I want to talk a little bit about the  
25 letter that was submitted, but we also believe, Judge, that

1 given the status of these cases right now, given the very  
2 dynamic situation in which we find ourselves, that it's  
3 important, actually, that we obtain the order that we sought  
4 through this emergency motion.

5 Quite honestly, we need to start getting certainty  
6 around the multitude of variables that we're dealing with to  
7 bring our plan modification motion before Your Honor, hopefully  
8 next week. And so we believe quite strongly, notwithstanding  
9 the letter that the DSRA submitted, that the entry of the order  
10 that we've submitted to chambers this morning should follow  
11 from this hearing.

12 So, Judge, I want to talk a little bit about how we  
13 crafted that order first. In our proposed order we paid a lot  
14 of attention to what Your Honor guided us with respect to  
15 yesterday in terms of your thinking on this matter. We tried  
16 to faithfully incorporate that guidance, and what we perceived  
17 as a key component of that was your focus and your reference on  
18 the UAL case that the debtors not attempt through the  
19 proceedings here to advocate or otherwise lessen the rights  
20 that DSRA may have with respect to the propriety of the PBGC's  
21 actions with respect to the salary plans.

22 Conversely, we understood that Your Honor was inclined  
23 to believe, and we agree completely, that actions that the DSRA  
24 may take outside this Court that go beyond protecting those  
25 statutory interests that they have with respect to the

1 propriety of the PBGC's actions, where they actually expand  
2 those and seek to impinge upon the debtors' rights and the  
3 debtors' obligations under, for example, the PBGC settlement  
4 agreement, we took Your Honor's guidance yesterday to lean in  
5 the direction that that would violate the automatic stay. We  
6 believe so very clearly, and so we've incorporated those two  
7 balancing concepts in the order that we've submitted to Your  
8 Honor.

9 Before I go through the order I want to just speak a  
10 little bit about why we believe that your guidance yesterday  
11 was the correct one and why entry of the order would be  
12 appropriate. Judge, earlier in this case, with respect to a  
13 question on the automatic stay, there was a phrase in one of  
14 your rulings where you said that a party cannot do indirectly  
15 what you're clearly prohibited from doing directly. And,  
16 technically, the Second Circuit mechanics for approaching this  
17 question is looking at an identity of interests. Another  
18 comment, previously, with respect to this identical issue, is  
19 that where you have a situation such that the action against a  
20 codefendant in some other court is, in essence, an action  
21 against the debtor, the automatic stay has been found to apply  
22 and/or extend to the codefendant. And that's previous  
23 citations with respect to the Nygard case, the North Star  
24 construction case and the Lomas Financial Corporation case.

25 And so, Judge, really, when you focus on the issue, in

1 this case the DSRA, in its Michigan action and what they appear  
2 to be planning on doing with respect to intervention, is  
3 attempting to exercise some neatly tailored drafting to avoid  
4 naming the debtors but, in fact, is making it so they don't --  
5 they don't want to facially violate the automatic stay, and we  
6 appreciate that. But what they're really doing is naming other  
7 parties, codefendants, in a way that directly affects what the  
8 debtors' obligations are and what the debtors, frankly, control  
9 of their property is in this Court.

10 So when you look at what they were seeking in the TRO,  
11 what they were seeking to do is to enjoin some named defendants  
12 from executing an agreement with the PBGC. Now, Judge, the  
13 reason why those three named defendants, I would submit the  
14 straw man that was set up in that Michigan action, is that  
15 those three named defendants were acting as the plan  
16 administrator. And so they could go off to another Court and  
17 seek to enjoin those folks.

18 But the simple fact is, Judge, under the salaried plan  
19 Delphi Corporation is the plan sponsor. Delphi Corporation is  
20 the plan administrator. And so under the PBGC settlement  
21 agreements Delphi Corporation has undertaken certain  
22 obligations with respect to the PBGC, one of which is that the  
23 plan administrator, upon entry of an order by this Court  
24 confirming our plan of reorganization, the plan administrator  
25 is going to execute some agreements with the PBGC resulting in

1 a termination of the salaried plans.

2 That is clearly within the province of Delphi  
3 Corporation as the plan administrator, and it's clearly  
4 required under the PBGC settlement agreement. And, Your Honor,  
5 I don't have to belabor the importance of the PBGC settlement  
6 agreement to the debtors' restructuring. It resolves a 7  
7 billion dollar claim. It's necessary for closing of the master  
8 disposition agreement. Without it the plan can't be  
9 consummated if it -- it certainly can't be consummated. So  
10 it's quite clear, when you understand what was actually being  
11 attempted in that Michigan action, that the plaintiffs were  
12 seeking to restrain Delphi Corporation from executing a  
13 document that is required under the PBGC settlement agreement.

14 So when it's understood thus, the identity of  
15 interests is compelling in this case, and we think that the  
16 automatic stay directly applies.

17 THE COURT: Well, I have that pleading before me, but  
18 I don't know what they're going to be doing now, right? I  
19 don't have a record of what these individuals, or this group,  
20 intends to do going forward, right? Because they've withdrawn  
21 that pleading at this point.

22 MR. HOGAN: Well, Judge, it appears that they've  
23 withdrawn the pleading in the Michigan action, but there's no  
24 question that they filed that action, they filed the temporary  
25 restraining order, and in the time we brought on the motion I



1 believe they're in violation of the automatic stay.

2 There's also no question that they intend to intervene  
3 in what appears to be the PBGC actions, which, by the way, were  
4 not filed pursuant to the PBGC settlement agreement. Those  
5 were actions that the PBGC independently took. The PBGC  
6 settlement agreement with the debtors contemplates them taking  
7 action under the settlement agreement after the plan  
8 modification order is approved.

9 THE COURT: Right.

10 MR. HOGAN: And so, and one thing I want to point out  
11 in --

12 THE COURT: But, conceivably, all they would do in  
13 that action would be what's covered under your paragraph 4. I  
14 mean, I don't really know what they're going to do. So aren't  
15 you asking me to sort of given an advisory opinion when the  
16 stay is out there already, and everyone knows the safest thing  
17 to do is to come and seek relief from the stay before taking an  
18 action that might overstep it?

19 MR. HOGAN: Judge, I suspect that your guidance would  
20 certainly lead people to take that action in the future. But  
21 what I would submit, Judge, is that given the rapid nature with  
22 which things are developing --

23 THE COURT: Rabid?

24 MR. HOGAN: Rapid. Rapid.

25 THE COURT: A-P.

1 MR. HOGAN: The very --

2 THE COURT: R-A-P.

3 MR. HOGAN: R-A-P.

4 THE COURT: Okay.

5 MR. HOGAN: There's a lot of moving parts to this  
6 particular piece of a larger puzzle where there's a lot of  
7 moving parts.

8 THE COURT: But that's why it's all the more important  
9 to proceed carefully to seek relief from the stay if there's  
10 any concern about a violation of it, I would think.

11 MR. HOGAN: I would agree with that, Judge. I'm just  
12 troubled by the activities that we've seen so far. Frankly,  
13 I'm troubled by the fact that what happened here was an attempt  
14 to intervene in these cases, file an objection in these cases,  
15 then filing an action in the Michigan Court, a TRO there. Now,  
16 apparently, a withdrawal of some of their objections here.  
17 Although, Judge, the motion to intervene was granted yesterday,  
18 so the DSRA has intervened in these cases. If they want to  
19 withdraw their objection I suppose they can do that. Now it  
20 appears that they want to go to the PBGC action, so I'm  
21 troubled by the number of forum -- it seems to be a fair amount  
22 of forum sampling going on here. And I really do think, given  
23 the circumstances, that entering an order making it clear what  
24 can and cannot happen, and it's really based on what activities  
25 we've already seen and what's promised. They're promising that

1 they're going to go to the PBGC action. And, Judge, one thing  
2 that they say --

3 THE COURT: But they're not promising that they're  
4 seeking an injunction, are they? I mean, they're not saying  
5 that at this point.

6 MR. HOGAN: Judge, I --

7 THE COURT: It's unlike the earlier pleading where  
8 they say we're going to go seek an injunction.

9 MR. HOGAN: Judge, I think that's right. I don't  
10 think they come out and say we're going to seek an injunction.  
11 But they do say in their papers that the filing by the PBGC  
12 establishes the PBGC action and the Michigan District Court as  
13 the exclusive forum for all litigation concerning the Delphi  
14 Retirement Program for Salaried Employees, the salaried plan.  
15 That is --

16 THE COURT: Well, obviously that's not right, because  
17 you have a motion for approval of the settlement with the PBGC  
18 in front of me.

19 MR. HOGAN: That's exactly correct. And as to who --

20 THE COURT: But they're not seeking a ruling on that  
21 from me. That's just a statement, right?

22 MR. HOGAN: It's a statement, Judge, but it causes a  
23 lot of concern that what we're going to see in that action are  
24 activities which are designed to either directly influence what  
25 Delphi does or what was done in the Michigan action. Again,

1 the plan administrator is Delphi Corporation, and so, Judge, we  
2 believe strongly that the only Court that can operate as to  
3 limit the plan administrator's obligation, exercise of its  
4 obligations, is this Court.

5 THE COURT: Okay.

6 MR. HOGAN: And so the order that we're proposing  
7 absolutely maintains their right to go intervene in that  
8 action. Absolutely maintains their rights to seek a  
9 determination under 1303(f) with respect to the propriety of  
10 the PBGC's actions. It just makes it very clear that as to  
11 what's before this Court, the operations of Delphi as the  
12 debtor here, as the plan sponsor, and as the plan  
13 administrator, which is clearly defined under the salaried  
14 plan, that they can't go and try and do in that Court -- they  
15 can't go and try and bind those entities as to those  
16 activities.

17 And so, Judge, when we look at the order that I  
18 proposed Your Honor, we believe it's clearly called for. It  
19 gives us some certainty and some clear guidance as to this  
20 aspect of our case, which is, again, moving at a very rapid  
21 pace.

22 And so, Your Honor, I can lead you through the order,  
23 but I think it's pretty straightforward. Again, it preserves  
24 their right --

25 THE COURT: No, I've read it. I mean, the key

1 paragraphs are two and four.

2 MR. HOGAN: That's correct, Your Honor. And here,  
3 again, it preserves their rights, their full statutory rights,  
4 to do what they want to do in the Michigan Court. It makes it  
5 clear that Delphi Corporation is plan sponsor, plan  
6 administrator. Those activities should be dealt with here in  
7 this Court. And we believe it's an appropriate order to enter  
8 at this juncture in the cases.

9 THE COURT: Okay.

10 MR. HOGAN: Okay? Thank you, Judge.

11 MR. MOLDOVAN: Good morning, Your Honor.

12 Joseph Moldovan, Morrison Cohen --

13 THE COURT: Good morning.

14 MR. MOLDOVAN: -- on behalf of Dennis Black and  
15 Charles Cunningham. One housekeeping matter. I apologize,  
16 Your Honor. My ERISA counsel, the Washington law firm, has  
17 been trying to get onto CourtCall but was informed that they  
18 were not authorized to do so, so I don't have them on the  
19 phone. I'd like the --

20 THE COURT: I don't know if they asked to be on it.

21 MR. MOLDOVAN: Well, they were on the call yesterday,  
22 Your Honor, and I believe they tried to get on today and were  
23 told they were not authorized.

24 THE COURT: They're set up each day separately.

25 MR. MOLDOVAN: And I think they were told they weren't

1 authorized.

2 THE COURT: Is the operator from the CourtCall on the  
3 call now? This is Judge Drain. You can hook them in. I'm  
4 telling you it's okay to hook them in.

5 OPERATOR: Judge, I have Amy Laban (ph.) on line.

6 MR. MOLDOVAN: We'll send him an e-mail if that's all  
7 right, Your Honor, and ask him to try to dial in.

8 THE COURT: Yes.

9 MR. MOLDOVAN: Thank you.

10 OPERATOR: If you need me to dial out to someone I  
11 would be more than happy to do that if you give me a name and  
12 number.

13 MR. MOLDOVAN: Thank you, Your Honor. I apologize for  
14 this.

15 THE COURT: No problem.

16 MR. MOLDOVAN: The name is Timothy O'Toole, and the  
17 number is 202-626-5552.

18 OPERATOR: You said that's 14:21 Timothy O'Toole?

19 MR. MOLDOVAN: That's correct.

20 OPERATOR: We'll have him joined momentarily. Does he  
21 need to have an open line, sir?

22 THE COURT: Does he need what?

23 OPERATOR: Does he need to have an open line?

24 THE COURT: Yes.

25 OPERATOR: Okay.

1 THE COURT: Okay.

2 MR. MOLDOVAN: Thank you.

3 THE COURT: You can go ahead.

4 MR. MOLDOVAN: Thank you, Your Honor.

5 THE COURT: You can go ahead.

6 MR. MOLDOVAN: I think I can respond relatively  
7 briefly and, also, address some of the points that Your Honor  
8 raised both today and yesterday. The action in Michigan has  
9 been dismissed.

10 THE COURT: Brought by your clients?

11 MR. MOLDOVAN: That's correct, Your Honor.

12 THE COURT: Right.

13 MR. MOLDOVAN: It was dismissed at --

14 THE COURT: So that would effectuate paragraph 3 of  
15 this proposed order.

16 MR. MOLDOVAN: That would effectuate it.

17 THE COURT: Right.

18 MR. MOLDOVAN: But paragraph 3 is, therefore, no  
19 longer necessary.

20 THE COURT: Right.

21 MR. MOLDOVAN: As is a finding for a determination by  
22 this Court that the stay applies, because there is no action  
23 pending. This is no justiciable controversy, and, therefore, I  
24 believe that the issue is moot. I do understand the concerns  
25 that have been raised by Delphi's counsel, but, nevertheless,

1 procedurally I believe that the issue before this Court with  
2 respect to their enforcement motion has been mooted by the  
3 dismissal of the Michigan action.

4 We do not know, Your Honor, what the retirees, re --  
5 salaried workers will do. To the extent that they participate  
6 in the PBGC filed action in Detroit they will be bound by the  
7 rules of that Court, the rules of ERISA and the rules of this  
8 Court and Your Honor's guidance yesterday with respect to the  
9 automatic stay.

10 THE COURT: And, ultimately, they will be bound by the  
11 automatic stay.

12 MR. MOLDOVAN: Yes, Your Honor.

13 THE COURT: Okay.

14 MR. MOLDOVAN: To the extent that they seek an action  
15 or seek to do anything which implicates the stay, either in its  
16 explicit capacity or by extension under Section 105 or the  
17 doctrines that have been enunciated by this circuit in Calpine,  
18 Queenie and others.

19 And we are mindful of those. And we are mindful of  
20 Your Honor's comments yesterday about the necessity of taking  
21 action in this Court prior to taking action in some other Court  
22 where the stay might be implicated.

23 It is, I think, critical just to make a couple of  
24 points, because I do think that the letter we submitted to this  
25 Court is comprehensive of the issues that have been raised by



1 the debtors, and, also, address the issues that have been  
2 raised by Your Honor.

3 First, there has been no forum shopping here. Your  
4 Honor was concerned yesterday and expressed your concern about  
5 gamesmanship. I hope that in the letter that we presented we  
6 stated to the Court why we believe in good faith that those  
7 actions taken in different forum were taken and addressed to  
8 Courts solely based upon those Courts specific jurisdiction and  
9 venue.

10 THE COURT: All right. Well, on that score I accept  
11 that you and your cocounsel were somewhat in the dark and  
12 facing a tight deadline. My focus was more on preventing  
13 confusion or duplicate rulings or potentially conflicting  
14 rulings on the same facts going forward and encouraging you all  
15 to avoid gamesmanship going forward. And that obviously  
16 pertains in the future, also, in respect of actions that people  
17 may be taking.

18 I will note that, for example, the complaint that was  
19 brought in Michigan sued these individuals not only in their  
20 fiduciary capacity but in their individual capacity and clearly  
21 could be read, since it does that, when it sought preliminary  
22 injunctive relief as even going so far as to enjoin them from  
23 taking any action, including as an employee of Delphi or as an  
24 executive of Delphi, from taking action. So there was clearly  
25 a potential there for real overlapping relief being sought.

1 But my concern was more to avoid it now that the picture was  
2 clearer and to make sure that people focused on it going  
3 forward.

4 MR. MOLDOVAN: And, Your Honor, we will. And Your  
5 Honor we did not -- it is not my understanding that it was the  
6 intention in that complaint to seek any action against the  
7 individuals except in their fiduciary capacity.

8 THE COURT: Right. But they were --

9 MR. MOLDOVAN: I understand.

10 THE COURT: That's not how they were named.

11 MR. MOLDOVAN: I understand that, Your Honor.

12 THE COURT: Okay.

13 MR. MOLDOVAN: With respect to the issues that we  
14 raised about what actions the salaried workers could take, or,  
15 as debtors' counsel stated, appear intending on taking.  
16 Whatever actions those are are subject to the rules and  
17 guidance of, as I said, the Court in Michigan and also whatever  
18 rights they have under ERISA. I don't believe that this Court  
19 or that Delphi should be suggesting, or would be suggesting,  
20 that workers don't have rights under ERISA. Where those rights  
21 touch on the debtors there may be a tension and something that  
22 needs to be resolved. The ERISA rights that we are expressly  
23 dealing with here are, I think, fairly clearly set forth, and  
24 when we stated in our letter that the Michigan Court is the  
25 sole Court that has jurisdiction and that the various ERISA

1 issues raised may only be raised to a district court, those  
2 related to termination of the plan by the PBGC are not --

3 THE COURT: All right. But, again, Mr. Moldovan, all  
4 sorts of creditors have rights, underlying non-bankruptcy  
5 rights. Trade creditors of Delphi have rights against Delphi  
6 under their contracts. And tort claimants have rights against  
7 Delphi under their contracts, and there may be some tort  
8 claimants who have an exclusive forum to pursue those rights.  
9 That doesn't mean that the automatic stay goes away for them to  
10 have the ability to pursue those rights. They still have to  
11 come to this Court and ask for relief from the automatic stay  
12 to go ahead and pursue those non-bankruptcy rights. That's, I  
13 mean, the stay comes first. That's why it's automatic. So --

14 MR. MOLDOVAN: I don't.

15 THE COURT: I appreciate that there is a forum under  
16 ERISA for certain rights to be heard, and I appreciate that  
17 people may have those rights, ultimately, but that doesn't stop  
18 the automatic stay from applying where it applies.

19 MR. MOLDOVAN: I don't suggest that it does, Your  
20 Honor. And I won't --

21 THE COURT: Okay. All right. There was sort of an  
22 implication in your letter that perhaps it did.

23 MR. MOLDOVAN: No. That is not my --

24 THE COURT: Okay.

25 MR. MOLDOVAN: That was not the intent of the letter.

1 THE COURT: All right.

2 MR. MOLDOVAN: The stay, I'm well aware of the impact  
3 of the stay --

4 THE COURT: All right.

5 MR. MOLDOVAN: -- and the importance of the stay,  
6 especially in my debtor practice.

7 THE COURT: Okay.

8 MR. MOLDOVAN: The order that has been presented to  
9 this Court by Delphi contains within it certain findings which,  
10 as I've stated, we believe are completely unnecessary and  
11 mooted by the dismissal of the action. We believe that we have  
12 been properly warned by this Court as to the likely consequence  
13 of an action taken in violation of what this Court's directions  
14 are, and we will be guided by that in the actions that we take,  
15 whatever they may be, in whatever forum.

16 We believe, therefore, that there is no reason for  
17 this Court to enter this order presented by the debtors, or any  
18 order, for that matter, other than an order stating that by  
19 virtue of the dismissal the motion for enforcement has been  
20 mooted. We have already acceded to the provision in paragraph  
21 3, as Your Honor has noted, and all paragraph 4 does is state  
22 that we have whatever rights we have. We don't need --

23 THE COURT: Well, paragraph 2 is the one you don't  
24 want to have entered.

25 MR. MOLDOVAN: Yes. Paragraph 2. I was going to get

1 to that. Paragraph 2 is a finding of fairly significant import  
2 for this case and potentially others, and one that this Court  
3 need not, and, in my view, ought not, make. It would have the  
4 effect of potentially meaning that a participant in a plan  
5 where any of these salaried workers could not, in any manner,  
6 raise challenges in the PBGC action, which would, pending in  
7 Detroit, which we concede is the forum in which plan  
8 termination is now pending. We are not dealing with the  
9 settlement with the PBGC, which is exclusively the province of  
10 this Court. And we believe that the language in that order is  
11 so broad as to potentially hamper any legitimate exercise by  
12 the salaried workers of their rights. And we believe it is  
13 unnecessary.

14 Again, we understand Your Honor's direction to the --

15 THE COURT: Well, again, I mean, when you say  
16 legitimate you mean legitimate without the automatic stay  
17 applying.

18 MR. MOLDOVAN: No, no, no. Your Honor --

19 THE COURT: I mean lots of people have legitimate  
20 rights.

21 MR. MOLDOVAN: Mindful --

22 THE COURT: You know, all the people with allowed  
23 claims have legitimate rights --

24 MR. MOLDOVAN: No.

25 THE COURT: --but the --

1 MR. MOLDOVAN: Your Honor, mindful of the effect of  
2 the stay --

3 THE COURT: Right.

4 MR. MOLDOVAN: I'm simply stating that we could not  
5 exercise rights under ERISA in that action at all. And,  
6 therefore I think that this is --

7 THE COURT: Well, you could come and get relief from  
8 the stay to exercise them.

9 MR. MOLDOVAN: Your Honor, we could. But there may be  
10 things that we're permitted to do in that action that are not  
11 implicated by the stay. I don't know. I'm not an ERISA  
12 lawyer. They're on the phone, I hope. But it is my  
13 understanding that there is a certain procedure that the PBGC  
14 will employ, to the extent that the salaried workers who want  
15 to participate in that process, they may take such action as is  
16 necessary. And to the extent that they do anything which would  
17 in any way affect this estate, I'll be back before this Court  
18 seeking appropriate relief.

19 THE COURT: Okay. All right. Before we go a lot  
20 further I do want to point out a case to both of you that is  
21 influencing my thinking on this. It's one of the many cases in  
22 the LTV bankruptcy dealing with pension issues. And it's In re  
23 Chateaugay Corp. at 76 B.R. 945 (S.D.N.Y. 1987), a district  
24 court case in which there was an appeal from a very broad order  
25 entered by Judge Lifland early in the case that essentially

1       channeled pension litigation, with some exceptions, into the  
2       bankruptcy court.

3               And I think it's relevant here for a couple of  
4       reasons. One is one of the appellants was a plaintiff, or a  
5       group of plaintiffs, in a lawsuit where LTV was the  
6       administrator of the plan, along with LTV officers and  
7       directors, who were also plan fiduciaries. As with many  
8       lawsuits under that scenario, which are described here, the  
9       plaintiffs in those lawsuits understood that the stay prevented  
10      the lawsuit proceeding against LTV in its capacity as plan  
11      administrator. But here the appellants, from Judge Lifland's  
12      sort of blanket order, pursued their action against the other  
13      plan fiduciaries. And the district court said they couldn't.  
14      They were prevented from doing that because of the overlapping  
15      interest.

16             The Court also said there were other situations where  
17      he was uncomfortable with sort of the blanket nature of the  
18      order, because you really need to have the facts before you  
19      before you can really determine whether the stay could be, at  
20      least, extended or a 105 injunction could issue.

21             So, to my mind, that does argue for not entering this  
22      order, particularly given the representations you've given to  
23      me. You've appeared in front of me a lot, and I understand  
24      that I can rely on those representations. But I think, again,  
25      this is not an area where you can feel comfortable to sort of,

1 you know, ready, shooting and then aiming afterwards. And I'm  
2 not saying that's what you're going to do, because you said  
3 just the opposite of that. But it seems to me there's, you  
4 know, it's very clear to me, for example, you used the Chrysler  
5 situation. If someone who opposed the Chrysler sale sought an  
6 injunction on Chrysler's board acting to implement the sale  
7 saying well, they're fiduciaries for us, because the debtor's  
8 insolvent and that would violate the stay. I mean, it's just  
9 the board is acting as Chrysler's agent.

10 Someone might be able to sue Fiat. A creditor of Fiat  
11 might be able to sue Fiat and say this is a bad idea for Fiat  
12 to enter into this deal. That, to my mind, probably wouldn't  
13 violate the automatic stay, because it's Fiat's problem.

14 I can certainly conceive of many things that your  
15 clients might do, including some of the relief they had  
16 previously sought that would fall into the former category and  
17 not the latter category. And I think that that's about all I  
18 am prepared to say today, particularly given your  
19 acknowledgement on behalf of your clients that they're not  
20 going to ready, shoot, aim here in the action in which they're  
21 seeking to intervene in Michigan.

22 MR. MOLDOVAN: Thank you.

23 THE COURT: Obviously, if there is some action that,  
24 despite all of that, is taken without coming here for stay  
25 relief, and, obviously, lots of people seek stay relief without



1 acknowledging that the stay applies. But it's always the  
2 safest thing to do. But if that's not done debtors can get me  
3 on very short notice.

4 MR. HOGAN: Judge, we appreciate that guidance. The  
5 LTV case, in particular, that you mentioned, we'll read that,  
6 because one of our main concerns is the confusion between  
7 people acting in capacities as sponsors, as administrators, so  
8 I appreciate that.

9 THE COURT: Well, I mean, you know the Second Circuit  
10 has long acknowledged that, and everyone else has, that a  
11 sponsor can be an administrator. And --

12 MR. HOGAN: Then that's --

13 THE COURT: I think that that --

14 MR. HOGAN: Right.

15 THE COURT: -- obviously, leaving aside the ultimate  
16 result. And Sonnox recognizes, for example, one can get stay  
17 relief. One of the factors is is the debtor acting as a  
18 fiduciary. That's one of the Sonnox factors arguing for stay  
19 relief. But I just think it's important to move carefully in  
20 this area and seek relief if there's any question here. And,  
21 obviously, if people are acting, essentially, as the debtors'  
22 agent, they have fiduciary duties if they're acting as the  
23 debtors' agent. And to my mind that raises a real issue about  
24 the automatic stay.

25 MR. MOLDOVAN: Fully understood, Your Honor.

1 THE COURT: It doesn't mean that relief might not be  
2 granted from the automatic stay, but it just raises the issue  
3 of having that look under the statutory injunction at 362  
4 before moving ahead.

5 MR. HOGAN: Judge, I appreciate that guidance, and in  
6 terms of the disposition of our emergency stay motion, I don't  
7 think it would be appropriate to deny that. I don't want to  
8 create any confusion.

9 THE COURT: No, it's not denied. I think it's moot.  
10 To the extent that you're seeking any other relief, other than  
11 enforcing the stay, I can keep it on the calendar, and that  
12 might, you know. But I'm telling you, whether or not it stayed  
13 on the calendar or not you can call chambers, put in a call to  
14 Mr. Moldovan, and I'll give you a hearing very quickly --

15 MR. MOLDOVAN: You Honor --

16 THE COURT: -- if something happens.

17 MR. MOLDOVAN: I've been before you for many years,  
18 and I'm not suicidal. If we choose to do something I'll be  
19 back.

20 THE COURT: Okay.

21 MR. HOGAN: Okay.

22 THE COURT: All right.

23 MR. HOGAN: Judge, we appreciate that.

24 THE COURT: Thank you.

25 MR. HOGAN: Thank you.

1 THE COURT: Okay.  
2 (Proceedings concluded at 10:35 AM)  
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C E R T I F I C A T I O N

I, Hana Copperman, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

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HANA COPPERMAN  
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